

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C.

In the matter of

Implementation of the Satellite Home  
Viewer Improvement Act of 1999

CS Docket No. 99-363

RECEIVED  
JAN 21 2000  
FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

REPLY COMMENTS OF  
THE ASSOCIATION OF LOCAL TELEVISION STATIONS, INC.

Did we miss something? The holidays are over, right? This season's gifts have been given, the wrap and ribbons are confined to the trash heap, and winter is upon us in earnest. Obviously, many of the MPVD commenters in this proceeding failed to notice. They essentially seek to have local television stations gift wrap their retransmission consent in brightly wrapped, tautly taped packages with shiny bows and deliver them *gratis*. And if local television stations do not get the message, then the Commission can assume the role of Dr. Seuss's proverbial Grinch and force those greedy local stations to capitulate. After all, Congress gave them the sun, why not ask the Commission for the moon and stars as well? For example, Echostar suggests that if cable systems pay no cash compensation, they should not either.<sup>1</sup> If the "normal" consideration for retransmission consent is carriage of a national cable network in which the local station licensee has an interest, then this should be the deal provided by the licensee to a satellite carrier. Such suggestions are easy to understand. Echostar continuously seeks to add to its service and already carries nearly all, if not all, popular cable networks (including four shopping channels). At most,

---

<sup>1</sup>Comments of Echostar Satellite Corporation, CS Docket 99-363 (filed January 12, 2000) at 17 [hereinafter cited as "Echostar Comments"].

as it observes, it would suffer the opportunity cost of taking one network in lieu of another.<sup>2</sup> In essence, they want a gift -- something for nothing.

As is obvious from ALTV's comments in this proceeding, ALTV fundamentally disagrees with the comments of the major satellite carriers, as well as a number of other MVPDs.<sup>3</sup> Essentially, they miss the point: Local television stations have no demonstrable bargaining power over satellite carriers. Congress rejected the notion that they had such power in adopting a compromise position in Section 325(b)(3).<sup>4</sup> All Congress sought to insure was good faith negotiations. It had no intention of turning the Commission into a rate court. Little more need be said to drive that point home.

However, ALTV does wish to address briefly several proffered premises of the "retransmission consent as late holiday gift" approach. First, nothing in the record even begins to suggest that local television stations have any bargaining leverage in retransmission consent negotiations or that they have used that leverage to deny retransmission consent to MVPDs. With respect to cable the record is clear. Local television stations have no leverage.<sup>5</sup> They invariably granted retransmission consent to cable systems. Similarly, nothing in the record suggests that satellite carriers are facing any difficulty in reaching retransmission consent agreements with local

---

<sup>2</sup>Echostar Comments at 8.

<sup>3</sup>Comments of ALTV, CS Docket No. 99-363 (filed January 12, 2000) [hereinafter cited as "ALTV Comments"].

<sup>4</sup>See ALTV Comments at 8, n.17.

<sup>5</sup>Echostar Comments at 2 *et seq.*, 15.

television stations.<sup>6</sup> As ALTV pointed out in its comments, local television stations have every incentive to be carried by satellite carriers.<sup>7</sup> They are much more concerned about *not* being carried. This hardly is a recipe for a stew of failed negotiations between satellite carriers and local television stations, such that the Commission must be ready to stir the pot and strain the sauce at the sight of every little lump.

Second, references to the royalty-free compulsory license ignore the true implications of the copyright element of the equation. If Congress had wanted MPVDs to carry local television station signals without payments to the stations, it could have left well enough alone and just provided the royalty free compulsory license. However, it expressly overlayed the compulsory license with the retransmission consent requirement to assure that stations do get payment for their signals commensurate with the value to the MVPD using the signal. In this regard, the value of a local signal to a satellite carrier appears enhanced by the ability of the satellite carrier to charge extra for local-into-local service -- which they do.<sup>8</sup> In such circumstances, no rational basis exists for questioning the good faith of local stations if they seek more than nothing for granting retransmission consent to a satellite carrier.

Third, the references to refusals to deal are misplaced. Section 325(b)(3)(C)(ii) expressly prohibits exclusive *contracts*. A unilateral refusal to deal by definition is not a contract. In any event, the statute is clear that a station may not refuse to negotiate, but it does not require that the

---

<sup>6</sup>Echostar, for example, makes only a hollow, groundless assertion in that regard. Echostar Comments at 11.

<sup>7</sup>ALTV Comments at 9.

<sup>8</sup>See ALTV Comments at 6.

parties agree. Even the National Labor Relations Act allows parties to bargain to an impasse.<sup>9</sup> As ALTV stated in its comments, forcing a local station to reach agreement would nullify the effect and intent of Section 325(b).<sup>10</sup>

Fourth, if the Commission were to adopt rules which include the numerous specific behaviors and terms which constitute a lack of good faith, it would place a sledge hammer in the hands of every MPVD negotiating with a local television station for retransmission consent. Unless the station gave retransmission on the terms demanded by the MVPD, it would face a trip to the FCC rate court. In such case, the Commission might as well read the statute out of existence.

Fifth, it borders on fantasy to think that satellite carriers are entitled to *better* deals than cable operators.<sup>11</sup> Cable systems have negotiated from a monopoly position and driven hard bargains. Furthermore, contrary to Echostar's assertions, local stations fear no loss of advertising revenue to cable as a result of *carriage* of the station's signal on the cable system.<sup>12</sup> They definitely fear a loss of advertising revenue from *lack of carriage*. Moreover, this is as true with respect to satellite carriers as it is to cable systems.

ALTV, therefore, urges the FCC to act with due restraint. No detailed set of rules is needed to compel stations to negotiate in good faith and reach fair, compensatory retransmission consent deals with satellite carriers and other MVPDs.

---

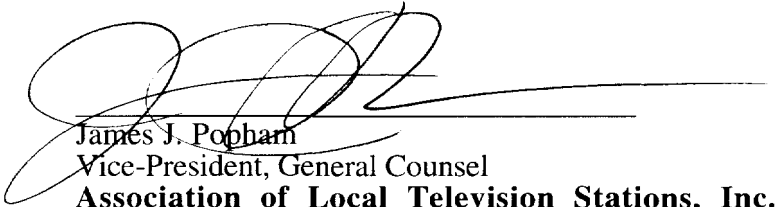
<sup>9</sup>See *AFTRA v. NLRB*, 395 F. 2d 622 (D.C. Cir. 1968).

<sup>10</sup>ALTV Comments at 15.

<sup>11</sup>Echostar Comments at 19.

<sup>12</sup>Echostar Comments at 19.

Respectfully submitted,

A handwritten signature in black ink, consisting of several loops and a long horizontal stroke extending to the right.

James J. Popham  
Vice-President, General Counsel  
**Association of Local Television Stations, Inc.**  
1320 19th Street, N.W.  
Suite 300  
Washington, D.C. 20036  
(202) 887-1970

January 21, 2000